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 BRYAN SPEECE, ASHLEY SALDANHA AND ENTECH TAIWAN

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

E-FILED - 10/27/05

PORTRAIT DISPLAYS, INC., a Delaware
 corporation,

Plaintiff,

vs.

BRYAN SPEECE, ASHLEY
 SALDANHA and ENTECH TAIWAN

Defendants.

Case No.: C 04 1501 RMW PVT

STIPULATED ORDER OF DISMISSAL
AND ORDER
[28 U.S.C. § 1367]

AND RELATED COUNTERCLAIMS

Plaintiff and Counterdefendant, Portrait Displays, Inc. (“PDI”), and
 Counterdefendants J. Michael James (“James”) and James Casey (“Casey”) (collectively,
 “PDI”) and Defendant and Counterclaimant, Bryan Speece, while not admitting any of the
 allegations of the Complaint or Counterclaims in this action hereby stipulate as follows:

1 WHEREAS, on July 8, 2005, Speece filed a Motion to Dismiss And/Or Remand
2 For Lack of Subject Matter Jurisdiction (the "Motion") in which he sought dismissal
3 and/or remand the action to California state court;

4 WHEREAS, on October 4, 2005, this Court issued an Order (the "Order") granting
5 Mr. Speece's Motion without specifying whether the action was to be remanded or simply
6 dismissed;

7 WHEREAS, PDI contends that the Court's Order was improvidently granted
8 because (1) the Stipulated Order of Dismissal that was submitted by PDI and Mr.
9 Speece's co-defendants, Ashley Saldanha and EnTech Taiwan, on August 18, 2005, and
10 which forms a basis for the Court's October 4 Order has not yet been entered by this
11 Court and, thus, this Court still has federal question jurisdiction over PDI's claim for
12 copyright infringement against those two co-defendants; and (2) even if the Stipulated
13 Order of Dismissal submitted on August 18, 2005 were entered, that Stipulated Order
14 specifically provides that the Court shall retain, and not cede, jurisdiction over this action;

15 WHEREAS, PDI further contends that the Court's October 4 Order is vague
16 because it does not specify whether the Court intends to remand the action to state court as
17 PDI believes it should so that the action can be resolved on the merits;

18 WHEREAS, in light of the issues raised above, PDI is prepared immediately to file
19 a Motion for Leave to File a Motion for Reconsideration And/Or Clarification of the
20 Court's October 4 Order to address such issues; and

21 WHEREAS, Mr. Speece does not oppose dismissal of the action;

22 WHEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
23 parties hereto through their respective counsel that this action, and any claims remaining
24 therein of either PDI or Speece, shall be dismissed without prejudice, that neither the
25 foregoing Order or this dismissal shall be deemed an adjudication on the merits of such
26 dismissed claims, and that such dismissed claims shall be subject to the tolling provisions
27 of 28 U.S.C. Sec. 1367(d).

1 Dated: October 24, 2005

MANATT, PHELPS & PHILLIPS, LLP

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3 By: /s/ Christopher L. Wanger
4 Christopher L. Wanger
5 Attorneys for
Portrait Displays, Inc., J. Michael James
and James Casey

6 Dated: October 24, 2005

LAW OFFICES OF MICHAEL T. WELCH

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8 By: /s/ Michael Welch
9 Michael T. Welch
10 Attorneys for
Bryan Speece

11 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding*
12 *signatures, Christopher L. Wanger hereby attests that concurrence in the filing of this*
13 *document has been obtained.*

14
15 **ORDER**

16 Pursuant to Stipulation and good cause appearing, IT IS HEREBY ORDERED that
17 this action shall be dismissed without prejudice, and subject to the tolling provisions of 28
18 U.S.C. Sec. 1367(d).

19 Dated: 10/27, 2005

20 /S/ RONALD M. WHYTE

21 Ronald M. Whyte
22 United States District Judge

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